

FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

GLEND A G. SUK, L.P.N.,
RESPONDENT.

FINAL DECISION
AND ORDER
LS9610112NUR


The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Board of Nursing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 20th day of march 1997.


A Member of the Board

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS
AGAINST
GLEND A G. SUK, L.P.N.,
RESPONDENT.

PROPOSED DECISION
Case No. LS-9610112-NUR
(DOE case no. 95 NUR 206)

PARTIES

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

Complainant:

Division of Enforcement
Department of Regulation and Licensing
Madison, WI 53708-8935

Respondent:

Glenda G. Suk
73 Bank Street
Milltown, WI 54858

Disciplinary Authority:

Board of Nursing
1400 East Washington Ave.
Madison, WI 53703

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint with the Board of Nursing on October 11, 1996. A disciplinary proceeding (hearing) was scheduled for January 14, 1997. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on October 11, 1996 to Glenda G. Suk at 73 Bank St., Milltown, WI 54858. The notice was returned by the Postal Service with the note: "Return to Sender / Box Closed / No Order on File".

B. No answer was filed by Ms. Suk.

C. The disciplinary proceeding was held as scheduled on January 14, 1997. Ms. Suk did not appear. The Board of Nursing was represented by attorney James Harris of the Department's Division of Enforcement. Mr. Harris moved that Ms. Suk be found in default under sec. RL 2.14, Wis. Admin. Code, and the motion was granted. The hearing was recorded; no transcript of the hearing was prepared. Testimony was received from IPP Program Assistant LeeAnn Cooper and Regulation Compliance Investigator Steve Rohland. A Statement of Facts signed by Ms. Suk upon entry into the IPP was admitted as exhibit 1. The complaint supplemented by the testimony and exhibit form the basis for this Proposed Decision.

APPLICABLE STATUTES AND RULES

Statutes

441.07 Revocation. (1) The board may, after disciplinary proceedings conducted in accordance with rules promulgated under s. 440.03 (1), revoke, limit, suspend or deny renewal of a license of a registered nurse, a nurse-midwife or a licensed practical nurse, may revoke, limit, suspend or deny renewal of a certificate to prescribe drugs or devices granted under s. 441.16, or may reprimand a registered nurse, nurse-midwife or licensed practical nurse, if the board finds that the person committed any of the following:

...

(c) Acts which show the registered nurse, nurse-midwife or licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.

(d) Misconduct or unprofessional conduct.

...

Wisconsin Administrative Code

N 7.01 Authority and intent.

(1) The rules in this chapter are adopted pursuant to authority of ss. 15.08 and 227.11 and interpret s. 441.07, Stats.

(2) The intent of the board of nursing in adopting this chapter is to specify grounds for limiting, suspending, revoking or denying renewal of a license or for reprimanding a licensee.

N 7.03 Negligence, abuse of alcohol or other drugs or mental incompetency.

...

(3) "Mental incompetency" is evidenced by conduct which reflects an impaired ability of the licensee to safely or reliably perform duties. "Mental incompetency" also includes, but is not limited to, adjudication of incompetence by a court of law.

N 7.04 Misconduct or unprofessional conduct. As used in s. 441.07 (1) (d), Stats., "misconduct or unprofessional conduct" means any practice or behavior which violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. "Misconduct or unprofessional conduct" includes, but is not limited to, the following:

(1) Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing. A certified copy of a judgment of conviction is prima facie evidence of a violation;

(2) Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law;

...
(15) Violating any rule of the board.

FINDINGS OF FACT

1. The respondent, Glenda G. Suk, is a licensed practical nurse in the state of Wisconsin, under license number 30830, issued July 19, 1991.
2. Ms. Suk's latest address on file with the department is 73 Bank Street, Milltown, WI 54858.
3. Ms. Suk has been diagnosed with major depression, recurrent.
4. Ms. Suk attempted to commit suicide in October of 1993.
5. On or about December 6, 1993, Ms. Suk attempted to commit suicide by ingesting quantities of benzodiazepine, Restoril® and Valium®. Ms. Suk diverted these controlled substances from the medication supplies of other individuals. On the same day, Ms. Suk injected herself with regular insulin which she diverted from her employer, Golden Age Nursing Home of Amery, Wisconsin.
6. Ms. Suk attempted to commit suicide on March 1, 1994.
7. Ms. Suk participated in the Impaired Professionals Procedure (IPP) administered by the department, but was terminated from the program in November, 1995, for non-compliance.
8. Ms. Suk's ability to safely and reliably practice as an L.P.N. is impaired.

CONCLUSIONS OF LAW

- I. The Board of Nursing has personal jurisdiction over the respondent, Glenda G. Suk, based on her holding a credential issued by the board, and based on notice under sec. 801.04 (2), Stats. Under sec. RL 2.08 (1), Wis. Admin. Code, a respondent may be served by mailing to his or her last-known address.
- II. The Board of Nursing is the legal authority responsible for issuing and controlling credentials for Licensed Practical Nurses, under ch. 441, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 441.07, Stats., and ch. N 7, Wis. Admin. Code.
- III. The respondent, Glenda G. Suk, is in default, under sec. RL 2.14, Wis. Admin. Code, and the Board of Nursing may enter an order on the basis of the complaint and other evidence.

IV. Ms. Suk's diversion of benzodiazepine, Restoril®, Valium®, and insulin constitutes misconduct or unprofessional conduct, under sec. N 7.04 (1) and N 7.04 (2), Wis. Admin. Code, and sec. 441.07 (1) d, Stats., and discipline is appropriate, under sec. 441.07, Stats.

V. The impairment of her ability to practice safely and reliably in Finding of Fact #8 above makes the respondent, Glenda G. Suk, unfit or incompetent by reason of mental incompetency, under sec. N 7.03 (3), Wis. Admin. Code, and sec. 441.07 (1) c, Stats., and discipline is appropriate, under sec. 441.07, Stats.

ORDER

THEREFORE, IT IS ORDERED that the license granted to the respondent, Glenda G. Suk, to practice as a licensed practical nurse, be suspended indefinitely, effective on the date the Final Decision and Order is signed.

IT IS FURTHER ORDERED that Ms. Suk may apply in writing to the Board of Nursing at any time within two years of the date of this order to stay or modify the suspension. Such request shall include a current psychiatric or psychological evaluation, shall describe any medical or other professional treatment she has received or is receiving, and shall be accompanied by proof that she is able to safely and reliably perform the duties of a licensed practical nurse. Upon receipt of such a request or any other communication from Ms. Suk, the Board of Nursing shall in its sole discretion determine whether and on what terms to stay the suspension or otherwise modify the discipline herein imposed.

IT IS FURTHER ORDERED that, if no request for a stay of suspension or other communication is received from Ms. Suk within two years of the date of this order, the license granted to Ms. Suk shall then be revoked. The Board of Nursing may modify this order at any time.

OPINION

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the Board of Nursing alleging that the respondent, Glenda G. Suk, suffers from a mental illness, has attempted suicide on at least three occasions, and on one occasion diverted medications which she self-administered in a suicide attempt. The burden of proof is on the Division of Enforcement to prove the allegations of the complaint by a preponderance of the evidence.

The complaint which was mailed to Ms. Suk's last-known address was returned undelivered. By operation of sec. RL 2.01 (1), Wis. Admin. Code, this attempted mailing constitutes sufficient service under sec. 801.04 (2), Stats., to give the board personal jurisdiction to proceed with this action against Ms. Suk. Ms. Suk's subsequent failure to respond to the allegations in the complaint

either with a written answer or by appearing at the hearing, caused her to be in default as provided by sec. RL 2.14, Wis. Admin. Code, and the board is authorized to make findings and enter an order on the basis of the complaint and other evidence. Since no evidence was presented by or on behalf of Ms. Suk, the allegations in the complaint constitute a preponderance of the evidence, and I conclude that Ms. Suk is unfit or incompetent to practice safely and reliably, and that she engaged in misconduct or unprofessional conduct. Discipline is appropriate.

Professional discipline is imposed for the protection of the public and the profession. Given the conclusions that Ms. Suk is unfit or incompetent, and that she engaged in misconduct or unprofessional conduct, and in the absence of any information from Ms. Suk regarding her present mental and physical condition, the only prudent disciplinary action is a complete withdrawal of her license, either suspension or revocation. Mr. Harris did not recommend revocation. He stated that Ms. Suk made some efforts to cooperate with the department, and he recommended an indefinite suspension with the opportunity to petition the board for conditional reinstatement or a stay of suspension. That recommendation is adopted with an added term to avoid a truly indefinite situation, that Ms. Suk's license be revoked if she makes no effort within two years to reinstate her nursing privileges.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed, and it is a matter of board discretion. In this case Ms. Suk was not "responsive", in the sense of cooperating with the investigation and prosecution of this action, but that is largely because the department could not locate her. She is remiss in not notifying the department of her present address, but Mr. Harris stated that the department's costs in prosecuting this case have not been substantial and, especially given the specific nature of the charges in this complaint (depression and attempted suicide), the imposition of costs in this case does not seem particularly appropriate. No order for costs is included.

Dated and signed: January 15, 1997



John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE BOARD OF NURSING

In the Matter of the Disciplinary Proceedings Against

Glenda G. Suk, L.P.N.,

AFFIDAVIT OF MAILING

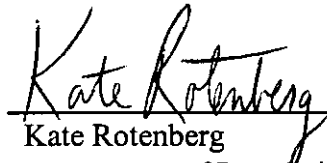
Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On March 26, 1997, I served the Final Decision and Order dated March 20, 1997, LS9610112NUR, upon the Respondent Glenda G. Suk, L.P.N. by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 201 374 120.
3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:


Glenda G. Suk, L.P.N.
73 Bank Street
Milltown WI 54858



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 26th day of March, 1997.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review. The Times Allowed For Each. And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN BOARD OF NURSING

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

March 26, 1997

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)